IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTIETH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 13209 of 2004

Between:

Nakka Krishna S/o. Late Nakka Eswara Rao
D.No.10-43-9, Ramanagar, Visakhapatnam.

..... PETITIONER

AND

1 The Chairman, Visakhapatnam Port Trust, Visakhapatnam.
2 The Manager (Operation) Visakhapatnam Port Trust, Visakhapatnam.
3 Chief Mechanical Engineer, CME, Dept, Visakahapatnam Port Trust,

Visakahapatnam.
4 The Govt. of India, rep. by its Secretary, Ministry for Shipping &

Transport Dept., Transport Bhavan, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not providing employment under compassionate grounds and pay the amount of the petitioner share out of pending and gratuity amount as ordered in S.O.P.No.133/1987 Dt.22.3.2002 as bad arbitrary, contrary to the Visakhapatnam Employees service rules apart from the G.O's issued from time to time.

Counsel for the Petitioner: MS.M.VIDYAVATHI

Counsel for the Respondents 1 to 3: MR.P.SRI RAGHU RAM

Counsel for the Respondent No.4: SMT. R.RAGHAMMA

The Court at the stage of admission made the following:

HONOURABLE DR. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.13209 OF 2004

ORDER:

The petitioner is the son of a deceased employee by name Nakka Eswar Rao. The deceased employee worked as a blacksmith in the respondent Port Trust and died in harness on 15-04-1987.

2. The petitioner claims that he is the son of the deceased employee through his mother Nakka Ramanamma. The petitioner, his mother, brother and sister requested the respondent Port Trust to release the benefits to them on account of the death of his father. The third respondent directed the petitioner and other applicants to obtain a succession certificate from a competent Court for settlement of the amounts payable to them through its letter dated 28-05-1987. As per the said direction, his mother, brother, sister and himself filed S.O.P.No.133 of 1987 on the file of the I Additional District Judge, Visakhapatnam for grant of succession certificate under Section 372 of the Law of Succession for the amounts due and payable to the deceased. At that time according to the petitioners, during the pendency of the application for succession certificate, one Jogi Ammaji resisted the claim contending that she is also the legal heir of the deceased and she gave birth to four sons through the deceased. Since the dispute was not settled, they filed AAO No.1532 of 1993 before this Court and this Court remanded the matter to the I Additional District Judge, Visakhapatnam through its order dated 14-06-2001. During the pendency of the application for succession certificate, the rival claimants entered into a compromise and the compromise was recorded and a succession certificate was issued in terms of the compromise dated 23-02-2002.

3 . The petitioner contends that according to the terms of the said compromise, all the children of the deceased employee shall equally share the amounts payable to the deceased and the benefits on account of his death. The future pension was ordered to be paid to the first respondent Jogi Ammaji and the compassionate appointment was agreed to be considered in favour of the petitioner herein. The petitioner's mother, brother and sister have taken their share of amounts and the amount payable to the petitioner was not released on the ground that his name was mentioned in the service record of the deceased as Nakka Krishna Murthy, whereas in the succession certificate the name of the petitioner is mentioned as Nakka Krishna.

4 . During the course of arguments, the learned counsel for the respondents conceded that there is no other son to the deceased employee by name Krishna and there is no dispute regarding the identity of the petitioner with reference to the said name. The only objection raised by the learned counsel for the respondents is that since the name of the petitioner is mentioned as Krishna Murthy in the nomination made by the deceased employee, the succession certificate mentioning the name of the petitioner as Krishna cannot be accepted.

5. Since the identity of the petitioner is not disputed, the respondents are directed to release the share of the petitioner without any objection regarding his name and they may release the said amount on the basis of the X Class certificate of the petitioner, where his name was mentioned as Nakka Krishna.

6. During the course of arguments the petitioner's counsel was directed to produce the representation, if any, made on behalf of the petitioner for compassionate appointment within one year after the death of his deceased father. The petitioner filed the Xerox copy of the representation dated 24-12-1987 said to be made to the respondent Port Trust. In the said representation the mother of the petitioner mentioned that one of the members of the family may be provided the compassionate appointment. The learned counsel for the

petitioner further represented that though the application for succession certificate was pending for several years, the petitioner was making representations repeatedly requesting the respondents to provide him compassionate appointment. Since the matter was pending before the District Court regarding the granting of succession certificate, the respondents did not consider his representation for appointment, but a communication dated 04-05-1995 was given informing the petitioner that his request for appointment on compassionate ground will be considered as soon as the dispute of succession is finalized.

7. The petitioner after obtaining the succession certificate made an application on 16-11-2002 to the respondents requesting to consider him for compassionate appointment. The respondents in response to the representation dated 16-11-2002 passed an order dated 28-01-2003 intimating that the request of the petitioner for appointment on compassionate grounds cannot be considered due to long lapse of 15 years, therefore, the petitioner approached this Court through this writ petition to declare that the action of the respondents in not providing employment under compassionate grounds, as arbitrary and contrary to the Service Rules and the Gos. issued from time to time.

8. The petitioner is contending that the application was made within time, but the request was not considered on the ground that the matter relating to the issuance of succession certificate is pending through the order dated 04-05-1994. Since the matter regarding the issuance of succession certificate has become final and as the respondents released the monetary benefits to the respective legal heirs, the petitioner is entitled to be considered for compassionate appointment.

9. The learned counsel for the petitioner submitted that there was no delay on the part of the petitioner in making the application. Since the earliest application was made by the petitioner on behalf of his family members to consider any one of the family members for compassionate appointment, the respondents cannot say that there was no application within the prescribed

time. The learned counsel for the petitioner further submitted that since the respondents did not pass any orders on the representation on the ground that the issue regarding the succession certificate is pending, the delay, if any, on their part cannot be attributed to the petitioner. Therefore, he requested to issue a direction to the respondents to consider the case of the petitioner for compassionate appointment.

10. In the light of the circumstances explained by the petitioner, the respondents are directed to consider all the representations of the petitioner commencing from 24-12-1987 and pass appropriate orders, keeping in view the succession certificate and the G.Os. that were issued from time to time and the relevant Rules regarding the compassionate appointment within two months from the date of receipt of a copy of this order and communicate the same to the petitioner. Though the respondents passed the order dated 28-01-2003, they are directed to pass a fresh order after considering the entire material and quoting the relevant Rules. The petitioner shall make a fresh representation for release of the amount and for compassionate appointment by referring the earlier applications along with the said certificate of succession, etc.

11. The Writ Petition is accordingly disposed of. No order as to costs.

Dr. G.YETHIRAJULU, J

30th August, 2004

SKM

Note:

Furnish C.C. within three days.

B/o.

skm

TO

1 The Chairman, Visakhapatnam Port Trust, Visakhapatnam.
2 The Manager (Operation) Visakhapatnam Port Trust, Visakhapatnam.
3 Chief Mechanical Engineer, CME, Dept, Visakahapatnam Port Trust,

Visakahapatnam.
4 The Secretary, Govt. of India, Ministry for Shipping &

Transport Dept., Transport Bhavan, New Delhi.

5 Two C.D. Copies.